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REMARKS

By this Amendment, claim 1 is revised to place this application in condition for allowance. Currently, claims 1-3, 5 and 9 are before the Examiner for consideration on their merits, with claims 4, 6-8, and 10 withdrawn from consideration.

In review, the Examiner has deemed new claim 10 to be an independent invention and has withdrawn it from consideration. This position is in error and claim 10 should be considered with the other claims before the Examiner as part of the examination of this application.

Applicants support the argument that claim 10 should be grouped with claim 1 by first referring back to claim 1, This claim defines a particular lens assembly, wherein the lens assembly is divided into an intermediate section extending across a middle level of the lens. An upper section is also defined that lies above the middle section. A lower section lies below the intermediate section. The intermediate section is defined with a see through clarity that is lower than both the upper and lower sections.

Claim 10 further defines the intermediate section as being fixed in the lens.

The Examiner alleges that the specification teaches that the belt like portion, i.e., the intermediate section can be welded to the outer surface of the lens, and is never taught to be fixed to the lens. While this implies that

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claim 10 is not supported by the specification, a new matter rejection was not made in the outstanding Office Action. Nonetheless, the contention that claim 10 is not supported is a misinterpretation of the teachings of the application. The Examiner's attention is directed to page 8, line 18 to page 9, line 4 for support for an embodiment wherein the intermediate section is fixed in the lens. This section clearly teaches that the lens could contain irregularities to lessen the see-through clarity. Therefore, the allegation that the specification does not teach the embodiment of claim 10 is incorrect. In fact, the specification does teach that the intermediate section could be "fixed in the lens."

While the above demonstrates that claim 10 is proper for inclusion in the application, the Examiner's reasoning that claim 10 is somehow a separate and distinct invention is not correct. Claim 10 merely defines a species of the intermediate section of claim 1. The real question is whether this species should be examined with claim 1. The answer to this question is yes since it is consistent with the elected species. As the Examiner will recall, the restriction requirement was made between the species wherein the upper and lower sections may be angled as best seen in Figure 4 and the species of Figures 1 and 2, wherein the lenses are not angled. Since the species of Figures 1 and 2 would still include a variety of intermediate section constructions, the

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specific one set forth in claim 10 is still consistent with the elected species and must be considered when examining the claims. Therefore, claim 10 should be reinstated for consideration on its merits.

Turning now to the prior art rejection, the Examiner has maintained the rejection based on Krupicka as modified by Sugarman. In the Examiner's comments to Applicants' last response, the Examiner continues to assert that Krupicka teaches "swimming goggles." While Applicants adamantly disagrees with this stance, claim 1 is revised to clarify the "swimming goggle" nature of the claimed goggles. Claim 1 now defines eye cups for each pair of lens assemblies, with each eye cup having a skirt adapted to contact skin of the wearer to form a seal to keep water from a user's eye.

With the amendment to claim 1, the combination of Krupicka and Sugarman does not teach each and every limitation thereof. Clearly, Krupicka does not teach the claimed eye cup for each lens assembly. Lacking this limitation, the Examiner has two choices. The first choice would be to concede that the applied prior art fails to establish a *prima facie* case of obviousness against claim 1, and withdraw both the rejection to claim 1 and the restriction requirement. The second choice would be to make another rejection under 35 U.S.C. § 103(a) and allege that it would be obvious to include eye cups on the glasses of Krupicka.

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It is respectfully submitted that there is absolutely no reason why one of skill in the art would use eye cups that contact a user's skin for the purposes of forming a water tight seal in the glasses of Krupicka. As previously argued, Krupicka teaches glasses which function as a golfing aid. They are not intended to be used underwater or while swimming, and there is no reason that eye cups as defined in claim 1 would be required.

If the Examiner were to allege that it would be obvious to include the claimed eye cups with the glasses of Krupicka, such would be the blatant reliance on hindsight and such a rejection could not be sustained on appeal. As the Examiner knows, any modification of the prior art requires motivation to do so, and there just cannot be such motivation when Krupicka and the invention are so far afield.

To summarize, the prior art applied against claim 1 cannot establish a *prima facie* case of obviousness for the simple reason that Krupicka teaches golfing aid glasses and the glasses cannot be legitimately modified to include eye cups that form a water tight seal with the wearer of the glasses. Thus, claim 1 is now patentably distinguishable over the applied prior art.

Applicants acknowledge that the amendment to claim 1 is made after a final rejection, and that its entry is at the discretion of the Examiner.

However, it is contended that the issue at hand has not changed with the

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submission of this Amendment. That is, Applicants have previously argued that Krupicka does not teach swimming goggles, and was not a proper reference to reject the claims. While these arguments were not found persuasive, the same argument is presented herein, just that the swimming goggle is further defined in the body of the claim rather than the preamble. No new issue requiring further search and consideration is raised by this amendment, and its entry is respectfully requested.

Moreover, prior art was already of record showing that swimming goggles employ eye cups, see the Japanese publication cited on page 1 of the specification. Thus, the Examiner does not have to conduct a further search to determine the existence of eye cups; they are already known. The only issue to be resolved is whether it would be obvious to modify the golfing aid glasses of Krupicka. As stated above, there is absolutely no reason to do so given the disparity between the sports of golfing and swimming.

As a last point, since generic claim 1 has been demonstrated to be patentable over the prior art, the restriction requirement should withdrawn as it has been applied to claims 4, 6-8, and 10, and all ten claims should be passed onto issuance.

Accordingly, the Examiner is respectfully requested to examine this application in light of this Amendment, and pass claims 1-10 onto issuance.

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If the Examiner believes that an interview would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1111.

The above constitutes a complete response to all issues raised in the Office Action dated August 1, 2006.

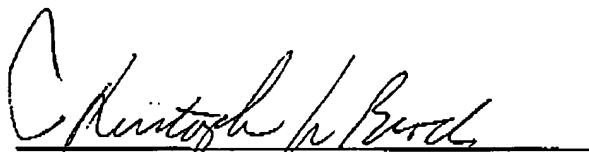
Again, reconsideration and allowance of this application is respectfully requested.

Please charge any fee deficiencies to Deposit Account No. 50-1088 and credit any excess fees to the same account.

Respectfully submitted,

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By



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